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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 ALEX BREMMER ABELSON,

14 Defendant.

CASE NO. CR 16-5247 RBL

ORDER DENYING MOTION TO  
REOPEN DETENTION HEARING

15  
16 The Defendant's Motion to Reopen Detention Hearing (Dkt. 110) was referred to the  
17 undersigned by District Judge Ronald B. Leighton. The Motion to Reopen is pursuant to 18  
18 U.S.C. §3142(f)(2)(B) which allows a judicial officer to reopen a detention hearing "if the  
19 judicial officer finds that information exists that was not known to the movant at the time of the  
20 hearing and that has a material bearing on the issue whether there are conditions of release that  
21 will reasonably assure the appearance of such person as required and the safety of any other  
22 person and the community."

23 The Plaintiff opposes the request to reopen.

24 For the reasons set forth below, the motion is DENIED.

1 The Defendant provides two reasons to support his request to reopen the detention  
2 hearing. First, he asserts that his prior attorney did not offer any letters from family members  
3 and friends for the Court’s consideration. Second, he asserts that his prior counsel did not have  
4 any discovery at the time he argued for release. Dkt. 110, p. 5.

5 **FIRST REASON: LETTERS FROM FAMILY AND FRIENDS**

6 The Defendant asserts that the numerous letters attached to his Motion to Reopen  
7 Detention Hearing show that his family and friends “believe Mr. Abelson will always appear for  
8 court and is in no way a danger to the community.” Dkt. 110, p. 5.

9 In response to the first reason, the Government notes that Mr. Abelson’s prior attorney  
10 did submit a letter from his client’s grandmother for consideration by the court at the detention  
11 hearing. The Government also notes that “none of the letters include any information that would  
12 not have been known to the Defendant at the time of his initial detention hearing.” Dkt. 114, p.  
13 3.

14 The Court agrees with the Government that the first reason provided by Mr. Abelson  
15 does not warrant reopening of the detention hearing. The statutory requirement is that there be  
16 new information that was not known to the **movant** at the time of the detention hearing. Mr.  
17 Abelson is the movant – not his prior attorney. Mr. Abelson certainly knew of the relationships  
18 he has with those who wrote letters on his behalf.

19 **SECOND REASON: DISCOVERY**

20 Mr. Abelson’s counsel has now obtained complete discovery which was not available to  
21 Mr. Abelson’s first attorney. She asserts that the information contained in the discovery shows  
22 that there is “scant evidence against Mr. Abelson other than being at a house when a search  
23 warrant happened to be executed where drugs and guns were found.” Dkt. 110, p. 5. She further  
24

1 asserts that the information contained in the discovery has a material bearing both on conditions  
2 of release as well as any argument that Mr. Abelson is a danger to the community.

3 The new information that the Defendant asserts was contained in the discovery includes  
4 the following:

5 (1) Mr. Abelson had only been on supervision for one month prior to the signing of the  
6 affidavit for a search warrant.

7 This, however, is not new information as this was known to Mr. Abelson at the time of  
8 the detention hearing. It is his knowledge that is at issue and not the knowledge or lack of  
9 knowledge of his prior attorney.

10 (2) Mr. Abelson was at the hospital with his new born son every day from April 6 to  
11 April 15.

12 If this information was contained in the recently obtained discovery, it is clearly  
13 information previously known to the movant, Mr. Abelson, and therefore does not constitute new  
14 information.

15 (3) Mr. Abelson asserts that “law enforcement saw Mr. Humburgs go to the McKinley  
16 Avenue house several times while Mr. Abelson was *in custody*.”

17 The Complaint includes specific dates when Mr. Humburgs was observed going to the  
18 McKinley Avenue house and certainly Mr. Abelson knew when he was in custody. This does  
19 not constitute new information. The Court also notes that Mr. Humburgs was observed going to  
20 the McKinley Avenue house at 2:50 a.m. on April 29, 2016 and the search warrant was executed  
21 at approximately 3:45 a.m. on April 29, 2016. Dkt. 1, p. 24. Clearly on this occasion Mr.  
22 Abelson was not in custody when this observation was made.

23 (4) Mr. Abelson’s prior criminal history consists of a few misdemeanors and one felony.

24 This information was contained in the pre-trial services report and included a summary

1 of the facts underlying the felony charge. This was information already known to Mr. Abelson  
2 and does not constitute new information.

3 (5) Mr. Abelson's prior defense counsel did not know that a number of the guns were  
4 found in a locked safe, that Ms. Pitts had the key to the safe on her key ring, and that agents  
5 could not find any fingerprints of Mr. Abelson on any of the firearms. Also, the firearm found in  
6 the bedroom was "inside Ms. Pitts' *closet*, in an unsecured lockbox, underneath a female's purse,  
7 and out of sight from where Mr. Abelson was sleeping." Dkt. 115, p. 4.

8 The specific information about the guns could be new information not known to the  
9 defendant at the time of the detention hearing but he certainly knew that guns were found as a  
10 result of the search, as that information is included in the Complaint. *See* Dkt. 1, p. 27. If he did  
11 not know about the presence of the guns, then his lack of knowledge was known to him at the  
12 time of the detention hearing.

13 (6) Prior counsel did not have access to the state court felony file which shows that Mr.  
14 Abelson was required to appear for fourteen different hearings and that he never missed one of  
15 the hearings.

16 Clearly Mr. Abelson knew this at the time of the detention hearing and therefore this does  
17 not constitute new information. In addition, the Court notes that the pre-trial services report does  
18 not reflect any failure to appear relating to the felony charge.

19 (7) DOC records show that Mr. Abelson's residence at the time of the search warrant  
20 execution was not the McKinley Avenue house but a different address in Puyallup.

21 The pre-trial services supplemental report includes the Puyallup address on the cover  
22 sheet. In addition Ms. Wikstrom told the pre-trial services officer that the defendant resided with  
23 her at the Puyallup address. Mr. Abelson clearly knew where he resided. This does not qualify  
24 as new information.

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**CONCLUSION**

For the reasons stated above, the Defendant's Motion to Reopen Detention Hearing (Dkt. 114) is DENIED.

DATED this 13<sup>th</sup> day of October, 2016.

  
Karen L. Strombom  
United States Magistrate Judge

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United States Magistrate Judge

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